

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1478 OF 2005

Smt.Harubai Rawaba Chougule
since deceased by her Lrs. .. Appellants
Versus
Yashodhabai @ Chababai Raosaheb
Chougule & Ors. .. Respondents

Mr.Amit Borkar for appellants
Mr.Surel Shah for respondent Nos. 1 to 4.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 9th August 2007.

P.C.

. Original plaintiff has filed this appeal challenging the judgement and decree of the lower appellate court in Regular Civil Appeal No.343 of 1994 dated 27th July 2005.

2. A suit was filed by the original plaintiffs - appellants before me being Special Civil Suit No.65 of 1988 in the Court of Joint

Civil Judge, Sr.Division Kolhapur for partition.

3. The suit property is described as 1A, 1B, 1C and 1D. Properties at 1B and 1D, admittedly, are house property whereas others are agricultural lands. The Partition Decree of the Trial Court in favour of the plaintiffs included all properties.

4. Defendant No.1 Yashodhabai and her sons so also daughters aggrieved by the fact that house properties 1B and 1D are also part of the decree for partition and separate possession, preferred abovementioned Regular Civil Appeal. The 4th Adhoc Additional Dist.Judge, Kolhapur after taking into consideration the materials placed on record observed that there is substance in the contention of defendant No.1 that these house properties are not joint family properties but her self-acquired ones. In holding so, the appellate court relied upon the fact that the

deceased Raosaheb had married twice. Original plaintiff Harubai was his first wife whereas defendant No.1 Yashodhabai was his second wife. From 1937, original plaintiff has been residing separately whereas Raosaheb shifted and stayed with defendant No.1 till his death in 1968. Yashodhabai purchased these properties under separate sale deeds Exhs.130 and 135, which have been executed long after the death of Raosaheb in 1972 and 1976. The lower appellate court placing reliance upon the Recitals therein and deposition of Yashodhabai and witnesses examined on her behalf, observed that there was a milk selling business from which Yashodhabai had some earnings. Further, she had also sold her ornaments and took some money from her brother to buy house properties.

5. The lower appellate court held that no evidence was produced on behalf of the original plaintiff to hold that the properties are part of

the joint family properties and have been purchased from the nucleus. Such material, being lacking, the lower appellate court believed the version of defendant No.1 insofar as house properties are concerned and modified the decree accordingly.

6. Mr.Borkar would submit that once the lower appellate court observed that there is no evidence with regard to the milk business, then, the version of defendant No.1 that the properties are her self-acquired properties, could not have been believed at all. This is the only source of income and about which neither any details were placed nor documents are forthcoming. In such circumstances, the material about properties being self-acquired is admittedly lacking. Even with regard to sale of ornaments and borrowing some monies from the brother is concerned, the lower appellate court has observed that there is no material to show that as well. In such

circumstances, the presumption that the property was purchased from joint family funds gets strengthened and the trial court was, therefore, right in decreeing the suit in its entirety. The substantial question of law would arise in the backdrop of these admitted facts. The presumption of the jointness is also reinforced by the fact that properties viz., 1A and 1C which are Agricultural Lands and from the Income derived therefrom, the house properties have been acquired.

7. In my view, the submissions canvassed by Mr.Borkar are essentially in the realm of calling upon this Court to re-appreciate and re-appraise the materials. Insofar as version placed by the original plaintiff is concerned, the trial court as well as lower appellate court have observed that the evidence produced by the plaintiff is not sufficient and satisfactory. It is observed by the lower appellate court in para 32 of its

judgement that there is no evidence to show what was the annual net income of the joint family landed property, expenses of the joint family members and the agricultural operations. Mere oral assertion that there was joint family land and after the death of the deceased Raosaheb, Yashodhabai - defendant No.1 purchased the property in her name from these funds is not enough. The defendant No.1 pointed out that she was doing milk business since 1952-53 and from her separate earnings the house properties are acquired is a version which has been accepted.

8. In other words, in the absence of any material produced by the original plaintiff, save and except her assertion that the property was joint family property, the version to the contrary, of the first defendant which was supported by witnesses examined on her behalf has been found to be trustworthy. The Judgement of the lower appellate court and the observation

that mere non production of receipt of sale of ornaments, does not mean that the version of first defendant and her witnesses has to be disbelieved or discarded in toto, is rendered after appreciation of evidence. The principles that have been applied and taken into consideration for appreciating the materials by the lower appellate court cannot be held to be such as would have no application to the facts nor are the findings perverse. The lower appellate court has considered the admitted position in para 21 and in para 22 traced the relations between defendant No.1 and the deceased Raosaheb. It is in such circumstances and when the deceased died in the year 1967 so also the original plaintiff and deceased having not stayed together after 1937, I find no error in the lower appellate court accepting the version of the first defendant.

9. It is not permissible for this Court to

re-appreciate and re-appraise the materials on record. The limited jurisdiction that is conferred upon this Court is with regard to a substantial question of law being raised. That admittedly does not arise as the submissions would only urge this court to further re-appreciate and re-appraise the materials. In such circumstances, there is no merit in this second appeal and the same is summarily dismissed. No costs.

(S.C.DHARMADHIKARI, J)